UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,728	08/04/2003	James M. Cleland	CLELS.64850	5581

27629 7590 09/28/2006

FULWIDER PATTON LEE & UTECHT, LLP
200 OCEANGATE, SUITE 1550
LONG BEACH, CA 90802

EXAMINER	
FORD, JOHN K	

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/633,728	CLELAND, JAMES M.	
	Examiner	Art Unit	
	John K. Ford	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on July 12, 2006

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.

5)☒ Claim(s) 1-6,13,14 is/are allowed.

6)☒ Claim(s) 12 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's response of July 12, 2006 has been studied carefully. Applicant has elected, without traverse, the invention of Group I, claims 1-6 and 12-14. Accordingly, claims 7-11 are withdrawn from consideration. Applicant could expedite allowance of this application by canceling claims 7-11 in response to this action

The Examiner requested that applicant send in a copy of WO 97/10171 dated 03/20/97 and listed on applicant's PTO–1449 form. The examiner acknowledges receipt of this document with applicant's July 12, 2006 response.

Applicant did not provide a copy of the Chapter I report for PCT/US03/35661 that apparently corresponds to the current application. Please provide the same in response to this action. This is a second request.

Please note the following claim informality: "conducting" is misspelled in claim 2, line 2. This is the second time applicant has been informed of this misspelling.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Frank (USP 2,009,883) and Hall (USP 2,188,506)

Applicant is referred to the discussion in MPEP 2114 for a discussion of why, in an apparatus claim, the material intended to be conditioned does not impart patentability to the apparatus. See in particular, Ex parte Masham, 2 USPQ2d 1647 (BPAI 1987). The fact that applicant claims a 'beverage conducting conduit' does not distinguish the claim from prior art that shows a fluid conducting conduit, denoted as a 'flue' in Frank.

Figure 5 of Frank teaches a superheater formed of four parallel tubes (two sets 15 and 16) that are joined together at opposite ends by a first set of Y-connectors. A further set of Y-connectors connects the aforementioned first set of Y-connectors to inlet and outlet pipes that exit the flue at the right-hand side of Figure 5. The flue (2), not labeled in Figure 5 (but shown in Figure 1), which is deemed to be the "beverage conducting conduit" (see discussion immediately above) does not have a "reciprocating pattern". Instead, the flow of flue gases through the flue is more or less straight across horizontally.

Hall teaches a superheater 12 that has a series of baffles 36 that forces the flue gases to move in a reciprocating pattern between entrance 33 and exit 37. To have arranged such baffles and the flue in Figure 5 of Frank to force the flue gasses to flow in a zig-zag pattern over the surfaces of at least the pipes 15 and 16 of Frank to increase the efficiency of the heat recovery of the device (by increasing the amount of time that

the gasses are in contact with the exterior of the pipes in Frank) would have been obvious to one of ordinary skill in the art.

Applicant traverses this rejection stating, without supporting reasons, that the flue of Frank is not the same as the claimed beverage conduit of claim 12. The claim as broadly read by the examiner is broad enough to encompass the structure of Frank even though Frank does not disclose any sort of beverage, for the reasons articulated above namely: Applicant is referred to the discussion in MPEP 2114 for a discussion of why, in an apparatus claim, the material intended to be conditioned does not impart patentability to the apparatus. See in particular, Ex parte Masham, 2 USPQ2d 1647 (BPAI 1987). The fact that applicant claims a 'beverage conducting conduit' does not distinguish the claim from prior art that shows a fluid conducting conduit, denoted as a "flue" in Frank.

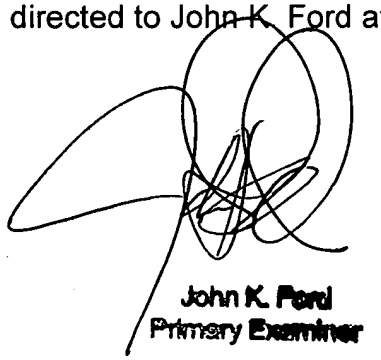
Furthermore, the argument that Hall's teaching of external baffles (36) on the outside of tubes (38) could not be applied to the outside of at least the tubes 15 and 16 of Frank is not credible. The fact that the tubes are of different sizes is of no moment. Moreover the motivation was clearly stated ("to increase the efficiency of the heat recovery of the device (by increasing the amount of time that the gasses are in contact with the exterior of the pipes in Frank)") and applicant has presented no evidence that it is not a valid motivation.

Claims 1-6, 13 and 14 are otherwise in condition for allowance~~, but for the informalities noted above and the 35 USC 112, second paragraph, problem noted above~~.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to John K. Ford at telephone number 571-272-4911.



John K. Ford
Primary Examiner